

## SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

### PART 219—SMALL BUSINESS PROGRAMS

Sec.  
219.000 Scope of part.  
219.001 Definitions.

#### Subpart 219.2—Policies

219.201 General policy.  
219.202 Specific policies.  
219.202-1 Encouraging small business participation in acquisitions.  
219.202-5 Data collection and reporting requirements.

#### Subpart 219.4—Cooperation With the Small Business Administration

219.401 General.

#### Subpart 219.5—Set-Asides for Small Business

219.502 Setting aside acquisitions.  
219.502-1 Requirements for setting aside acquisitions.  
219.502-2 Total set-asides.  
219.502-3 Partial set-asides.  
219.505 Rejecting Small Business Administration recommendations.

#### Subpart 219.6—Certificates of Competency

219.602 Procedures.  
219.602-1 Referral.  
219.602-3 Resolving differences between the agency and the Small Business Administration.

#### Subpart 219.7—Subcontracting with Small Business, Small Disadvantaged Business and Women-Owned Small Business Concerns

219.702 Statutory requirements.  
219.703 Eligibility requirements for participating in the program.  
219.704 Subcontracting plan requirements.  
219.705 Responsibilities of the contracting officer under the subcontracting assistance program.  
219.705-2 Determining the need for a subcontracting plan.  
219.705-4 Reviewing the subcontracting plan.  
219.706 Responsibilities of the cognizant administrative contracting officer.  
219.708 Solicitation provisions and contract clauses.

#### Subpart 219.8—Contracting With the Small Business Administration (The 8(a) Program)

219.800 General.  
219.803 Selecting acquisitions for the 8(a) Program.  
219.804 Evaluation, offering, and acceptance.  
219.804-1 Agency evaluation.  
219.804-2 Agency offering.  
219.804-3 SBA acceptance.  
219.805 Competitive 8(a).  
219.805-2 Procedures.  
219.806 Pricing the 8(a) contract.  
219.808 Contract negotiations.  
219.808-1 Sole source.  
219.811 Preparing the contracts.  
219.811-1 Sole source.  
219.811-2 Competitive.  
219.811-3 Contract clauses.  
219.812 Contract administration.

#### Subpart 219.10—Small Business Competitiveness Demonstration Program

219.1005 Applicability.  
219.1007 Procedures.

#### Subpart 219.11—Price Evaluation Adjustments for Small Disadvantaged Business Concerns

219.1102 Applicability.

#### Subpart 219.12—Small Disadvantaged Business Participation Program

219.1203 Incentive subcontracting with small disadvantaged business concerns.  
219.1204 Solicitation provisions and contract clauses.

#### Subpart 219.70 [Reserved]

#### Subpart 219.71—Pilot Mentor-Protege Program

219.7100 Scope.  
219.7101 Policy.  
219.7102 General.  
219.7103 Procedures.  
219.7103-1 General.  
219.7103-2 Contracting officer responsibilities.  
219.7104 Developmental assistance costs eligible for reimbursement or credit.  
219.7105 Reporting.  
219.7106 Performance reviews.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36353, July 31, 1991, unless otherwise noted.

**219.000 Scope of part.**

This part also implements 10 U.S.C. 2323, which sets a goal for DoD for each of fiscal years 1987 through 2003 to—

(1) Award five percent of contract and subcontract dollars to small disadvantaged business (SDB) concerns, historically black colleges and universities (HBCUs), and minority institutions (MIs) (See part 226 for policy/procedures on HBCU/MIs); and

(2) Maximize the number of such entities in DoD contracting and subcontracting.

[56 FR 36353, July 31, 1991, as amended at 59 FR 27670, May 27, 1994; 64 FR 62987, Nov. 18, 1999]

**219.001 Definitions.**

*Small disadvantaged business concern* is defined:

(1) At FAR 52.219-23(a) (i.e., a firm is considered a small disadvantaged business (SDB) concern by receiving certification by the Small Business Administration and meeting the other listed criteria), except as specified in paragraph (2) of this definition.

(2) At FAR 52.219-23(a) or 52.219-1(b)(2) for the following purposes (i.e., a firm is considered an SDB concern by either receiving certification by the Small Business Administration and meeting the other listed criteria or self-representing its status for general statistical purposes):

(i) A higher customary progress payment rate for SDB concerns (see 232.501-1(a)(i) and 252.232-7004(c)).

(ii) A lower threshold for inclusion of customary progress payments in contracts with SDB concerns (see 232.502-1).

(iii) The prompt payment policy for SDB concerns in 232.903 and 232.905(2).

(iv) Reporting contract actions with SDB concerns ("Type of Business" on the DD Form 350, Individual Contracting Action Report (see 253.204-70(d)(5)(i)(A)) or "Small Disadvantaged Business (SDB) Actions" on the DD Form 1057, Monthly Contracting Summary of Actions \$25,000 or Less (see 253.204-71(g)(2)).

[63 FR 64429, Nov. 20, 1999]

**Subpart 219.2—Policies****219.201 General policy.**

(a) The DoD will use the Section 8(a) program, small disadvantaged business evaluation preferences, advance payments, outreach, and technical assistance to meet its five percent goal for contract and subcontract awards to small disadvantaged businesses.

(d) For the defense agencies, the director of the Office of Small and Disadvantaged Business Utilization must be appointed by, be responsible to, and report directly to the director or deputy director of the defense agency.

(8) The responsibility for assigning small business technical advisors is delegated to the head of the contracting activity.

(10) Contracting activity small business specialists perform this function by—

(A) Reviewing and making recommendations for all acquisitions over \$10,000;

(B) Making the review before issue of the solicitation or contract modification and documenting it on DD Form 2579, Small Business Coordination Record; and

(C) Referring recommendations that have been rejected by the contracting officer to the Small Business Administration (SBA) procurement center representative. However, if an SBA representative is not assigned or available, the specialist refers the matter to the specialist's appointing authority.

(e) Contracting and contract administration activities appoint small business specialists as directed by DoDD 4205.1, DoD Small Business and Small Disadvantaged Business Utilization Programs, Specialists—

(i) Report directly and are responsible only to their appointing authority;

(ii) Make sure that the contracting activity takes the necessary actions to implement small business, historically black college and university/minority institution, and labor surplus area programs;

(iii) Advise and assist contracting, program manager, and requirements personnel on all matters which affect small businesses, historically black colleges and universities or minority

institutions, and labor surplus area concerns;

(iv) Aid, counsel, and assist small business, small disadvantaged business, historically black colleges and universities, and minority institutions by providing—

(A) Advice concerning acquisition procedures;

(B) Information regarding proposed acquisitions; and

(C) Instructions on preparation of proposals in the interpretation of standard clauses, representations, and certifications;

(v) Maintain an outreach program (including participation in Government-industry conferences and regional interagency small business councils) designed to locate and develop information on the technical competence of small business, small disadvantaged business concerns, historically black colleges and universities, and minority institutions;

(vi) Ensure that financial assistance, available under existing regulations, is offered and also assist small business concerns in obtaining payments under their contracts, late payment, interest penalties, or information on contractual payment provisions;

(vii) Provide assistance to contracting officers in determining the need for and acceptability of subcontracting plans and assist administrative contracting officers (see 219.706(a)(ii)) in evaluating, monitoring, reviewing, and documenting contract performance to determine compliance with subcontracting plans; and

(viii) Recommend to the appointing authority the activity's small and disadvantaged business program goals, including goal assignments to subordinate contracting offices; monitor the activity's performance against these goals; and recommend action to correct reporting errors/deficiencies.

(f) The Directors, Office of Small and Disadvantaged Business Utilization, of the military departments and defense agencies are responsible for determining whether use of the price evaluation adjustment to achieve a small disadvantaged business goal has caused non-SDB firms in a particular North American Industry Classification Sys-

tem Industry Subsector to bear an undue burden or other inappropriate effect. A copy of each determination shall be forwarded to the Office of Small and Disadvantaged Business Utilization, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics), simultaneously with submittal to the Office of Federal Procurement Policy.

[56 FR 36353, July 31, 1991, as amended at 63 FR 41973, Aug. 6, 1998; 64 FR 2598, Jan. 15, 1999; 65 FR 39705, June 27, 2000; 65 FR 50149, Aug. 17, 2000; 65 FR 63807, Oct. 25, 2000]

## **219.202 Specific policies.**

### **219.202–1 Encouraging small business participation in acquisitions.**

The DoD will maximize the use of small business concerns as planned producers in the Industrial Readiness Planning Program.

### **219.202–5 Data collection and reporting requirements.**

Determine the premium percentage to be entered in Item D4C of the Individual Contracting Action Report (DD Form 350), (see 253.204–70), as follows:

(1) For small disadvantaged business or historically black college and university/minority institution set-asides, divide the difference between the fair market price and the award price by the fair market price.

(2) For price evaluation adjustment awards (see FAR Subpart 19.11), divide the difference between the low responsive offer and the award price by the low responsive offer.

(3) For partial small business set-asides with preferential consideration for small disadvantaged business concerns, divide the difference between the award price on the non-set-aside portion and the award price on the set-aside portion by the award price on the non-set-aside portion.

(b) Within 60 days after the end of each fiscal year, departments and agencies shall submit the report to the Secretary of Defense, who will report to the SBA on behalf of all DoD departments and agencies. Reports must include—

(i) Justification for failure to meet goals established by the Office of the Secretary of Defense; and

## Department of Defense

## 219.602-3

(ii) Planned actions for increasing participation by such firms in future contract awards.

[56 FR 36353, July 31, 1991, as amended at 63 FR 41973, Aug. 6, 1998; 65 FR 63804, Oct. 25, 2000]

### Subpart 219.4—Cooperation With the Small Business Administration

#### 219.401 General.

(b) The contracting activity small business specialist is the primary activity focal point for interface with the SBA.

### Subpart 219.5—Set-Asides for Small Business

#### 219.502 Setting aside acquisitions.

##### 219.502-1 Requirements for setting aside acquisitions.

Do not set aside acquisitions for—

(1) Supplies which were developed and financed, in whole or in part, by Canadian sources under the U.S.-Canadian Defense Development Sharing Program; or

(2) Architect-engineer services for military construction or family housing projects of \$85,000 or more (10 U.S.C. 2855), including indefinite delivery and indefinite quantity contracts if the value of all anticipated orders is expected to total \$85,000 or more.

[58 FR 28465, May 13, 1993]

##### 219.502-2 Total set-asides.

(a) Unless the contracting officer determines that the criteria for set-aside cannot be met, set aside for small business concerns acquisitions for—

(i) Construction, including maintenance and repairs, under \$2 million;

(ii) Dredging under \$1 million; and

(iii) Architect-engineer services for military construction or family housing projects of under \$85,000.

[58 FR 28465, May 13, 1993]

##### 219.502-3 Partial set-asides.

(c)(1) If the North American Industry Classification System Industry Subsector of the acquisition is one in which use of a price evaluation adjust-

ment for small disadvantaged business concerns is currently authorized (*see* FAR 19.201(b)), apply the adjustment to the non-set-aside portion.

[65 FR 50149, Aug. 17, 2000]

#### 219.505 Rejecting Small Business Administration recommendations.

(b) The designee shall be at a level no lower than chief of the contracting office.

### Subpart 219.6—Certificates of Competency

#### 219.602 Procedures.

##### 219.602-1 Referral.

When making a nonresponsibility determination on a small business concern, the contracting officer shall notify the contracting activity's small business specialist.

[58 FR 28465, May 13, 1993, as amended at 60 FR 40107, Aug. 7, 1995]

##### 219.602-3 Resolving differences between the agency and the Small Business Administration.

(c)(i) If the contracting officer believes the agency should appeal, the contracting officer shall immediately inform the departmental director of the Office of Small and Disadvantaged Business Utilization, and send the director, through departmental channels—

(A) A request for appeal, summarizing the issues. The request must be sent to arrive within five working days after receipt of the SBA Headquarters' written position.

(B) An appeal file, documenting the contracting activity's position. The file must be sent to arrive within five working days after transmission of the request.

(ii) The departmental director will determine whether the agency will appeal and will notify the SBA of the agency's intent.

[56 FR 36353, July 31, 1991, as amended at 62 FR 34122, June 24, 1997]

**Subpart 219.7—Subcontracting with Small Business, Small Disadvantaged Business and Women-Owned Small Business Concerns**

**219.702 Statutory requirements.**

(a) Section 834 of Public Law 101-189, as amended, requires DoD to establish a test program to determine whether comprehensive subcontracting plans on a corporate, division, or plant-wide basis will reduce administrative burdens while enhancing subcontracting opportunities for small and small disadvantaged business concerns.

(i) The test program—

(A) Will be conducted—

(1) From October 1, 1990, through September 30, 2005;

(2) In accordance with the DoD test plan, “Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans”; and

(3) By the military departments and defense agencies through specifically designated contracting activities; and

(B) Permits contractors selected for participation in the test program by the designated contracting activities to—

(1) Negotiate plant, division, or company-wide comprehensive subcontracting plans instead of individual contract subcontracting plans; and

(2) Use the comprehensive plans when performing any DoD contract or subcontract that requires a subcontracting plan.

(ii) During the test period, comprehensive subcontracting plans will—

(A) Be negotiated on an annual basis by the designated contracting activities;

(B) Be incorporated by the contractors’ cognizant contract administration activity into all of the contractors’ active DoD contracts that require a plan;

(C) Be accepted for use by contractors participating in the test, whether performing at the prime or subcontract level; and

(D) Not be subject to application of liquidated damages during the period

of the test program (Section 402, Pub. L. 101-574).

[56 FR 36353, July 31, 1991, as amended at 60 FR 35668, July 10, 1995; 61 FR 39900, July 31, 1996; 63 FR 14640, Mar. 26, 1998; 64 FR 62987, Nov. 18, 1999]

**219.703 Eligibility requirements for participating in the program.**

(a) Qualified nonprofit agencies for the blind and other severely disabled, that have been approved by the Committee for Purchase from People Who Are Blind or Severely Disabled under the Javits-Wagner-O’Day Act (41 U.S.C. 46-48), are eligible to participate in the program as a result of 10 U.S.C. 2410d and Section 9077 of Pub. L. 102-396 and similar sections in subsequent Defense appropriations acts. Under this authority, subcontracts awarded to such entities may be counted toward the prime contractor’s small business subcontracting goal.

(2)(A) To be eligible as an SDB subcontractor, a concern must meet the definition in 219.001.

(B) To be eligible as a historically black college or university or minority institution subcontractor, such entity must meet the definition in the clause at 252.219-7003, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (DoD Contracts).

(b) A contractor may also rely on the written representation as to status of—

(i) A historically black college or university or minority institution; or

(ii) A qualified nonprofit agency for the blind or other severely disabled approved by the Committee for Purchase from People Who Are Blind or Severely Disabled.

[57 FR 42630, Sept. 15, 1992, as amended at 58 FR 28465, May 13, 1993; 60 FR 13075, Mar. 10, 1995; 60 FR 41157, Aug. 11, 1995; 60 FR 61596, Nov. 30, 1995; 61 FR 50535, Sept. 26, 1996; 63 FR 11530, Mar. 9, 1998; 63 FR 41974, Aug. 6, 1998; 64 FR 51076, Sept. 21, 1999; 64 FR 62986, Nov. 18, 1999]

**219.704 Subcontracting plan requirements.**

(a)(1) The goal for use of small disadvantaged business concerns shall include subcontracts with historically black colleges and universities and minority institutions (see subpart 226.70),

## Department of Defense

219.800

in addition to subcontracts with small disadvantaged business concerns. Subcontracts with historically black colleges and universities and minority institutions do not have to be included in the small disadvantaged business goal in commercial items subcontracting plans.

(4) In those subcontracting plans which specifically identify small, small disadvantaged, and women-owned small businesses, prime contractors shall notify the administrative contracting officer of any substitutions of firms that are not small, small disadvantaged, or women-owned small businesses for the firms listed in the subcontracting plan. Notifications shall be in writing and shall occur within a reasonable period of time after award of the subcontract. Contractor-specified formats shall be acceptable.

[60 FR 61596, Nov. 30, 1995, as amended at 61 FR 18687, Apr. 29, 1996]

### **219.705 Responsibilities of the contracting officer under the subcontracting assistance program.**

#### **219.705-2 Determining the need for a subcontracting plan.**

(d) See 215.304 for unique DoD requirements.

[59 FR 27670, May 27, 1994, as amended at 64 FR 51076, Sept. 21, 1999]

#### **219.705-4 Reviewing the subcontracting plan.**

(d) Challenge any subcontracting plan that does not contain positive goals and consider the extent to which an offeror plans to use competition restricted to historically black colleges and universities or minority institutions. A small disadvantaged business goal of less than five percent must be approved two levels above the contracting officer.

[56 FR 36353, July 31, 1991, as amended at 63 FR 41974, Aug. 6, 1998]

### **219.706 Responsibilities of the cognizant administrative contracting officer.**

(a)(i) The contract administration office also is responsible for reviewing, evaluating, and approving master subcontracting plans.

(ii) The small business specialist supports the administrative contracting officer in evaluating a contractor's performance and compliance with its subcontracting plan.

### **219.708 Solicitation provisions and contract clauses.**

(b)(1)(A) Use the clause at 252.219-7003, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (DoD Contracts), in solicitations and contracts that contain the clause at FAR 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan.

(B) In contracts with contractors which have comprehensive subcontracting plans approved under the test program described in 219.702(a), use the clause at 252.219-7004, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (Test Program), instead of the clauses at 252.219-7003, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (DoD Contracts), and FAR 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan.

(2) In contracts with contractors that have comprehensive subcontracting plans approved under the test program described in 219.702(a), do not use the clause at FAR 52.219-16, Liquidated Damages—Subcontracting Plan.

(c)(1) Do not use the clause at FAR 52.219-10, Incentive Subcontracting Program, in contracts with contractors that have comprehensive subcontracting plans approved under the test program described in 219.702(a).

[56 FR 36353, July 31, 1991, as amended at 56 FR 67213, Dec. 30, 1991; 61 FR 39901, July 31, 1996; 63 FR 64429, Nov. 20, 1998; 65 FR 52952, Aug. 31, 2000]

## **Subpart 219.8—Contracting With the Small Business Administration (The 8(a) Program)**

### **219.800 General.**

(a) By Memorandum of Understanding (MOU) dated May 6, 1998, between the Small Business Administration (SBA) and the Department of Defense (DoD), the SBA delegated to the

Under Secretary of Defense (Acquisition, Technology, and Logistics) its authority under paragraph 8(a)(1)(A) of the Small Business Act (5 U.S.C. 637(a)) to enter into 8(a) prime contracts, and its authority under paragraph 8(a)(1)(B) of the Small Business Act to award the performance of those contracts to eligible 8(a) Program participants. Consistent with the provisions of this subpart, this authority is hereby redelegated to DoD contracting officers within the United States, its territories and possessions, Puerto Rico, the Trust Territory of the Pacific Islands, and the District of Columbia, to the extent that it is consistent with any dollar or other restrictions established in individual warrants. This authority is being delegated and redelegated on a pilot test basis and shall expire on December 31, 2001. Notwithstanding this MOU, contracting officers may elect to award the contract pursuant to the provisions of FAR subpart 19.8.

(b) Awards under the MOU may be awarded directly to the 8(a) participant on either a sole source or competitive basis.

(c) Contracts awarded under the MOU may be awarded directly to the 8(a) participant. An SBA signature on the contract is not required.

[63 FR 33587, June 19, 1998, as amended at 65 FR 39705, June 27, 2000; 66 FR 49863, Oct. 1, 2001]

#### **219.803 Selecting acquisitions for the 8(a) Program.**

(b) Contracting activities should respond to SBA requests for contract support within 30 calendar days after receipt.

(c) Before considering a small business set-aside, review the acquisition for offering under the 8(a) Program.

[56 FR 36353, July 31, 1991, as amended at 63 FR 41974, Aug. 6, 1998]

#### **219.804 Evaluation, offering, and acceptance.**

##### **219.804-1 Agency evaluation.**

(f) The 8(a) firms should be offered the opportunity to give a technical presentation.

[63 FR 41974, Aug. 6, 1998]

##### **219.804-2 Agency offering.**

(1) For requirements processed under the MOU cited in 219.80 (but see paragraph (2) of this subsection for procedures related to purchase orders that do not exceed the simplified acquisition threshold), the notification to the SBA shall clearly indicate that the requirement is being processed under the MOU. All notifications should be submitted in writing, using facsimile or electronic mail, when possible, and shall specify that—

(i) Under the MOU, an SBA acceptance or rejection of the offering is required within 5 working days of receipt of the offering; and

(ii)(A) For sole source requirements, an SBA acceptance shall include a size verification and a determination of the 8(a) firm's eligibility, and, upon acceptance, the contracting officer will solicit a proposal, conduct negotiations, and make award directly to the 8(a) firm; or

(B) For competitive requirements, upon acceptance, the contracting officer will solicit offers, conduct source selection, and, upon receipt of an eligibility verification, award a contract directly to the selected 8(a) firm.

(2) Under the MOU cited in 219.800, no separate agency offering or SBA acceptance is needed for requirements that are issued under purchase orders that do not exceed the simplified acquisition threshold. After an 8(a) contractor has been identified, the contracting officer shall establish the prices, terms, and conditions with the 8(a) contractor and shall prepare a purchase order consistent with the procedures in part 213 and FAR part 13, including the applicable clauses required by this subpart. No later than the day that the purchase order is provided to the 8(a) contractor, the contracting officer shall provide to the cognizant SBA Business Opportunity Specialist, using facsimile or electronic mail—

(i) A copy of the purchase order; and

(ii) A notice stating that the purchase order is being processed under the MOU. The notice also shall indicate that the 8(a) contractor will be deemed eligible for award and will automatically begin work under the purchase order unless, within 2 working days after SBA's receipt of the purchase

## Department of Defense

## 219.811-2

order, the 8(a) contractor and the contracting officer are notified that the 8(a) contractor is ineligible for award.

[63 FR 33587, June 19, 1998]

### 219.804-3 SBA acceptance.

For requirements processed under the MOU cited in 219.800, SBA's acceptance is required within 5 working days (but see 219.804-2(2) for purchase orders that do not exceed the simplified acquisition threshold).

[63 FR 33587, June 19, 1998]

### 219.805 Competitive 8(a).

#### 219.805-2 Procedures.

(c) For requirements processed under the MOU cited in 219.800—

(i) For sealed bid and negotiated acquisitions, the SBA will determine the eligibility of the firms and will advise the contracting officer within 2 working days after its receipt of a request for an eligibility determination; and

(ii) For negotiated acquisitions, the contracting officer may submit a request for an eligibility determination on as many as three of the most highly rated offerors.

[63 FR 33588, June 19, 1998]

### 219.806 Pricing the 8(a) contract.

For requirements processed under the MOU cited in 219.800—

(1) The contracting officer shall obtain cost or pricing data from the 8(a) contractor, if required by FAR subpart 15.4; and

(2) SBA concurrence in the negotiated price is not required. However, except for purchase orders not exceeding the simplified acquisition threshold, the contracting officer shall notify the SBA prior to withdrawing a requirement from the 8(a) Program due to failure to agree on price or other terms and conditions.

[63 FR 33588, June 19, 1998]

### 219.808 Contract negotiations.

#### 219.808-1 Sole source.

For requirements processed under the MOU cited in 219.800—

(1) The agency may negotiate directly with the 8(a) contractor. The

contracting officer is responsible for initiating negotiations;

(2) The 8(a) contractor is responsible for negotiating within the time established by the contracting officer;

(3) If the 8(a) contractor does not negotiate within the established time and the agency cannot allow additional time, the contracting officer may, after notifying the SBA, proceed with the acquisition from other sources;

(4) If requested by the 8(a) contractor, the SBA may participate in negotiations; and

(5) SBA approval of the contract is not required.

[63 FR 33588, June 19, 1998]

### 219.811 Preparing the contracts.

#### 219.811-1 Sole source.

(a) Awards under the MOU cited in 219.800 may be made directly to the 8(a) contractor and, except as provided in paragraph (b) of this subsection and in 219.811-3, award documents shall be prepared in accordance with procedures established for non-8(a) contracts, using any otherwise authorized award forms. The "Issued by" block shall identify the awarding DoD contracting office. The contractor's name and address shall be that of the 8(a) participant.

(b) Use the following alternative procedures for direct awards made under the MOU cited in 219.800:

(i) Cite 10 U.S.C. 2304(c)(5) as the authority for use of other than full and open competition;

(ii) Include the clause at 252.219-7009, which allows for direct award to the 8(a) contractor, and identify the cognizant SBA district office for the 8(a) contractor;

(iii) No SBA contract number is required; and

(iv) Do not require an SBA signature on the award document.

[63 FR 33588, June 19, 1998]

#### 219.811-2 Competitive.

Awards made under the MOU cited in 219.800 shall be prepared in accordance with 219.811-1.

[63 FR 33588, June 19, 1998]



## 219.811-3

## 48 CFR Ch. 2 (10-1-01 Edition)

### 219.811-3 Contract clauses.

(1) Use the clause at 252.219-7009, Section 8(a) Direct Award, instead of the clauses at FAR 52.219-11, Special 8(a) Contract Conditions, FAR 52.219-12, Special 8(a) Subcontract Conditions, and FAR 52.219-17, Section 8(a) Award, in solicitations and contracts processed in accordance with the MOU cited in 219.800.

(2) Use the clause at FAR 52.219-18, Notification of Competition Limited to Eligible 8(a) Concerns, with 252.219-7010, Alternate A, in solicitations and contracts processed in accordance with the MOU cited in 219.800.

(3) Use the clause at 252.219-7011, Notification to Delay Performance, in solicitations and purchase orders issued in accordance with 219.804-2(2).

[63 FR 33588, June 19, 1998]

### 219.812 Contract administration.

(d) Awards under the MOU cited in 219.800 are subject to Section 407 of Pub. L. 100-656. These contracts include the clause at 252.219-7009, Section 8(a) Direct Award, which requires the 8(a) contractor to notify the SBA and the contracting officer when ownership of the firm is being transferred.

[63 FR 33588, June 19, 1998]

## Subpart 219.10—Small Business Competitiveness Demonstration Program

### 219.1005 Applicability.

(a)(i) Architect-engineering services in support of military construction projects or military family housing projects are exempt from the Small Business Competitiveness Demonstration Program, except for the emerging small business (ESB) set-aside requirements. Accordingly, these shall—

(A) Be reviewed for possible award under the 8(a) Program regardless of dollar value.

(B) Not be set aside for small business if the estimated value is \$85,000 or more (including indefinite delivery-indefinite quantity contracts if the value of all anticipated orders exceeds \$85,000).

(C) Be considered for ESB set-aside if the estimated value is both less than

the emerging small business reserve amount and less than \$85,000.

(D) Be considered for small business set-aside if the estimated value is less than \$85,000, regardless of whether small business set-asides for other architect-engineer services are prohibited under the Small Business Competitiveness Demonstration Program, when an ESB set-aside is not appropriate.

(ii) All requirements of the Small Business Competitiveness Demonstration Program apply to architect-engineer services in support of other than military construction projects or military housing objects, which otherwise meet criteria in FAR subpart 19.10.

(b) The targeted industry categories for DoD are:

North American Industry Classification System (NAICS) Description	NAICS Code
(1) Pharmaceutical Preparation Manufacturing .....	325412
(2) Ammunition (except Small Arms) Manufacturing .....	332993
(3) Other Ordnance and Accessories Manufacturing .....	332995
(4) Turbine and Turbine Generator Set Unit Manufacturing .....	333611
(5)(i) Aircraft Engine and Engine Parts Manufacturing .....	336412
(ii) Research and Development in the Physical, Engineering, and Life Sciences (Aircraft Engines and Engine Parts only) .....	54171
(6)(i) Guided Missile and Space Vehicle Manufacturing .....	336414
(ii) Research and Development in the Physical, Engineering, and Life Sciences (Guided Missiles and Space Vehicles only) .....	54171
(7)(i) Other Guided Missile and Space Vehicle Parts and Auxiliary Equipment Manufacturing ..	336419
(ii) Research and Development in the Physical, Engineering, and Life Sciences (Guided Missile and Space Vehicle Parts and Auxiliary Equipment only) .....	54171
(8) Military Armored Vehicle, Tank and Tank Component Manufacturing .....	336992
(9) Search and Navigation System and Instrument Manufacturing ...	334511
(10)(i) Cellular and Other Wireless Telecommunications .....	513322

## Department of Defense

219.7100

North American Industry Classification System (NAICS) Description	NAICS Code
(ii) Satellite Telecommunications .....	51334
(iii) Other Telecommunications	51339

[56 FR 36353, July 31, 1991, as amended at 59 FR 27670, May 27, 1994; 62 FR 34122, June 24, 1997; 63 FR 41974, Aug. 6, 1998; 65 FR 50149, Aug. 17, 2000; 66 FR 49861, Oct. 1, 2001]

### 219.1007 Procedures.

(b)(1) The Director, Small and Disadvantaged Business Utilization, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics) (OUSD(AT&L)), will determine whether reinstatement of small business set-asides is necessary to meet the agency goal and will recommend reinstatement to the Director of Defense Procurement (OUSD(AT&L)). Military departments and defense agencies shall not reinstate small business set-asides unless directed by the Director of Defense Procurement.

(d) Reporting requirements are at 204.670-2.

[65 FR 39705, June 27, 2000]

### Subpart 219.11—Price Evaluation Adjustment for Small Disadvantaged Business Concerns

#### 219.1102 Applicability.

(b) The price evaluation adjustment also shall not be used in acquisitions that are for commissary or exchange resale.

[63 FR 41974, Aug. 6, 1998]

### Subpart 219.12—Small Disadvantaged Business Participation Program

SOURCE: 63 FR 64429, Nov. 20, 1998, unless otherwise noted.

#### 219.1203 Incentive subcontracting with small disadvantaged business concerns.

The contracting officer shall encourage increased subcontracting opportunities for SDB concerns in negotiated acquisitions by providing monetary in-

centives in the North American Industry Classification System Industry Subsectors for which use of an evaluation factor or subfactor for participation of SDB concerns is currently authorized (see FAR 19.201(b)). Incentives for exceeding SDB subcontracting targets shall be paid only if an SDB subcontracting target was exceeded as a result of actual subcontract awards to SDBs, and not a result of developmental assistance credit under the Pilot Mentor-Protégé Program (see Subpart 219.71).

[63 FR 64429, Nov. 20, 1998, as amended at 65 FR 50149, Aug. 17, 2000]

#### 219.1204 Solicitation provisions and contract clauses.

(c) The contracting officer shall, when contracting by negotiation, insert in solicitations and contracts containing the clause at FAR 52.219-25, Small Disadvantaged Business Participation Program-Disadvantaged Status and Reporting, a clause substantially the same as the clause at FAR 52.219-26, Small Disadvantaged Business Participation Program-Incentive Subcontracting, when authorized (see FAR 19.1203). The contracting officer may include an award fee provision in lieu of the incentive; in such cases, however, the contracting officer shall not use the clause at FAR 52.219-26. Do not use award fee provisions in contracts with contractors that have comprehensive subcontracting plans approved under the test program described in 219.702(a).

### Subpart 219.70 [Reserved]

### Supart 219.71—Pilot Mentor-Protége Program

SOURCE: 65 FR 6555, Feb. 10, 2000, unless otherwise noted.

#### 219.7100 Scope.

This subpart implements the Pilot Mentor-Protége Program established under Section 831 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510; 10 U.S.C. 2302 note). The purpose of the Program is to provide incentives for DoD contractors to assist protege firms in enhancing

## **219.7101**

their capabilities and to increase participation of such firms in Government and commercial contracts.

[66 FR 47108, Sept. 11, 2001]

### **219.7101 Policy.**

DoD policy and procedures for implementation of the Program are contained in Appendix I, Policy and Procedures for the DoD Pilot Mentor-Protege Program.

### **219.7102 General.**

The Program includes—

(a) Mentor firms that are prime contractors with at least one active subcontracting plan negotiated under FAR Subpart 19.7.

(b) Protege firms that are—

(1)(i) small disadvantaged business concerns as defined at 219.001(1);

(ii) Business entities owned and controlled by an Indian tribe;

(iii) business entities owned and controlled by a Native Hawaiian Organization;

(iv) Qualified organizations employing the severely disabled; or

(v) Women-owned small business concerns;

(2) Eligible for receipt of Federal contracts; and

(3) Selected by the mentor firm.

(c) Mentor-protege agreements that establish a developmental assistance program for a protege firm.

(d) Incentives that DoD may provide to mentor firms, including:

(1) Reimbursement for developmental assistance costs through—

(i) A separately priced contract line item on a DoD contract; or

(ii) A separate contract, upon written determination by the Director, Small and Disadvantaged Business Utilization, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics) (SADBU, OUSD (AT&L)), that unusual circumstances justify reimbursement using a separate contract; or

(2) Credit toward applicable subcontracting goals, established under a subcontracting plan negotiated under FAR

## **48 CFR Ch. 2 (10–1–01 Edition)**

Subpart 19.7, for developmental assistance costs that are not reimbursed.

[65 FR 6555, Feb. 10, 2000; 65 FR 30191, May 10, 2000, as amended at 66 FR 47108, Sept. 11, 2001]

### **219.7103 Procedures.**

#### **219.7103–1 General.**

The procedures for application, acceptance, and participation in the Program are in Appendix I, Policy and Procedures for the DoD Pilot Mentor-Protege Program. The Director, SADBU, OUSD (AT&L), approves contractors as mentor firms, approves mentor-protege agreements, and forwards approved mentor-protege agreements to the contracting officer when program funding is available through a DoD program manager.

#### **219.7103–2 Contracting officer responsibilities.**

Contracting officers must—

(a) Negotiate an advance agreement on the treatment of developmental assistance costs for either credit or reimbursement if the mentor firm proposes such an agreement, or delegate authority to negotiate to the administrative contracting officer (see FAR 31.109).

(b) Modify (without consideration) applicable contract(s) to incorporate the clause at 252.232–7005, Reimbursement of Subcontractor Advance Payments—DoD Pilot Mentor-Protege Program, when a mentor firm provides advance payments to a protege firm under the Program and the mentor firm requests reimbursement of advance payments.

(c) Modify (without consideration) applicable contract(s) to incorporate other than customary progress payments for protege firms in accordance with FAR 32.504(c) if a mentor firm provides such payments to a protege firm and the mentor firm requests reimbursement.

(d) Modify applicable contract(s) to establish a contract line item for reimbursement of developmental assistance costs if—

(1) A DoD program manager has made funds available for that purpose; and

(2) The contractor has an approved mentor-protege agreement.

(e) Negotiate and award a separate contract for reimbursement of developmental assistance costs only if—

(1) A DoD program manager has made funds available for that purpose;

(2) The contractor has an approved mentor-protege agreement; and

(3) The Director, SADB, OUSD (AT&L), has made a determination in accordance with 219.7102(d)(1)(ii).

(f) Not authorize reimbursement for costs of assistance furnished to a protege firm in excess of \$1,000,000 in a fiscal year unless a written determination from the Director, SADB, OUSD (AT&L), is obtained.

(g) Advise contractors of reporting requirements in Appendix I.

(h) Provide a copy of the approved Mentor-Protege agreement to the Defense Contract Management Agency administrative contracting officer responsible for conducting the annual performance review (see appendix I, section I-112).

[65 FR 6555, Feb. 10, 2000; 65 FR 30191, May 10, 2000, as amended at 65 FR 50150, Aug. 17, 2000; 66 FR 47109, Sept. 11, 2001]

**219.7104 Developmental assistance costs eligible for reimbursement or credit.**

(a) Developmental assistance provided under an approved mentor-protege agreement is distinct from, and must not duplicate, any effort that is the normal and expected product of the award and administration of the mentor firm's subcontracts. The mentor firm must accumulate and charge costs associated with the latter in accordance with its approved accounting practices. Mentor firm costs that are eligible for reimbursement are set forth in appendix I.

(b) Before incurring any costs under the Program, mentor firms must establish the accounting treatment of developmental assistance costs eligible for reimbursement or credit. Advance agreements are encouraged. To be eligible for reimbursement under the Program, the mentor firm must incur the costs before October 1, 2005.

(c) If the mentor firm is suspended or debarred while performing under an approved mentor-protege agreement, the

mentor firm may not be reimbursed or credited for developmental assistance costs incurred more than 30 days after the imposition of the suspension or debarment.

(d) Developmental assistance costs incurred by a mentor firm before October 1, 2005, that are eligible for crediting under the Program, may be credited toward subcontracting plan goals as set forth in appendix I.

[65 FR 6555, Feb. 10, 2000; 65 FR 30191, May 10, 2000]

**219.7105 Reporting.**

Mentor and protege firms must report on the progress made under mentor-protege agreements as indicated in appendix I, section I-111.

**219.7106 Performance reviews.**

The Defense Contract Management Agency will conduct annual performance reviews of all mentor-protege agreements as indicated in appendix I, section I-112. The determinations made in these reviews should be a major factor in determinations of amounts of reimbursement, if any, that the mentor firm is eligible to receive in the remaining years of the Program participation term under the agreement.

[65 FR 50150, Aug. 17, 2000]

**PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS**

Sec.

222.001 Definition.

**Subpart 222.1—Basic Labor Policies**

222.101 Labor relations.

222.101-1 General.

222.101-3 Reporting labor disputes.

222.101-3-70 Impact of labor disputes on defense programs.

222.101-4 Removal of items from contractors' facilities affected by work stoppages.

222.101-70 Acquisition of stevedoring services during labor disputes.

222.102 Federal and State labor requirements.

222.102-1 Policy.

222.103 Overtime.

222.103-4 Approvals.